THE NEW-YORK
CITY-HALL RECORDER.

VOL. I. *For October*, 1816. NO. 10.

AT THE COURT OF CHANCERY, holden at the City-Hall of the city of New-York, on Tuesday the eighth of October, in the year of our Lord one thousand eight hundred and sixteen.

PRESENT,

The Honorable
JAMES KENT,
Chancellor of the State of New-York.
ISAAC L. KIPP, *Clerk.*

HABEAS CORPUS—VAGRANT ACT.

IN THE MATTER OF THOMAS F. GOODHUE.

EMMET & PRICE, *Counsel for the prisoner.*
RODMAN, *Counsel for the people.*

A prisoner, committed to Bridewell by one of the Police Magistrates, under the Vagrant Act, applied to the Recorder of the city of New-York, and obtained a Certiorari to remove the proceedings into the Supreme Court, and before the matter was brought to a hearing, he was brought before the Chancellor on a habeas corpus, and a motion was made for his discharge; it was held that the Chancellor had no jurisdiction over the subject matter, and no power either under the habeas corpus act, or at common law, to discharge the prisoner.

The Certiorari, thus obtained, did not supersede or affect the conviction, so as to entitle the prisoner to a discharge.

After the commitment of a prisoner to Bridewell, as a fugitive from justice in another State, a reasonable time had elapsed, during which the Executive of that State might have made a demand for his delivery, according to the constitution of the United States, but no demand appeared to have been made; on being brought before the Chancellor on a habeas corpus, the prisoner was discharged.

The prisoner was brought up on a oabeas corpus, allowed by his Honor the Chancellor, under the habeas corpus act, and the return to that writ stated, that the prisoner was detained in custody by virtue of the following warrants of commitment:

1. A mittimus issued by Josiah Hedden, Esquire, one of the Police Magistrates, on the fourteenth of August last, stating that the prisoner had been convicted before him, *as a disorderly person*, and that he thereupon committed him to prison sixty days.

2. A mittimus issued by the same Magistrate on the seventeenth of August last; for that the prisoner was charged with a misdemeanor, alleged to have been committed within the state of *Kentucky*, in obtaining money by false pretences.

3. A like mittimus, issued by James Warner, Esquire, another of the Police Magistrates, on the twenty-first of August last, for a like offence, committed in *Kentucky*.

The counsel for the prisoner, being ordered by the Chancellor to confine their argument to the conviction of the prisoner first above mentioned, moved for his discharge, and read an affidavit of the prisoner, stating, among other things, that the conviction had been removed into the Supreme Court by Certiorari, and that a recognizance had been entered into, to prosecute the same, &c. as is required by the statute in such cases.

On this motion, the counsel for the prisoner contended on the following grounds, that the prisoner ought to be discharged.

1. The Chancellor has the power, at common law, of allowing the writ of habeas corpus for the relief of all persons wrongfully imprisoned. This power is fully recognized in the English authorities, and has been frequently exercised for the liberty of the subject. 4 Inst. 81. 182. & Jac. Law Dict. tit. hab. corp. and the cases there cited.

2. This is a case where such power ought to be exercised: the conviction is summary, and the magistrate before whom it took place is not answerable to the party, however great may have been the oppression.

3. By the statute (1 vol. N. R. L. p. 141.) a Certiorari may be allowed in all cases of summary conviction before justices of the peace. The effect of this writ is, to remove the judgment, together with all proceedings had thereon, into the court above; where the conviction will be quashed should it appear that the justice has acted *male fide*, or that the proceeding is erroneous. In this case, the Certiorari granted by the Recorder, necessarily operated to the discharge of the prisoner. He ought not, therefore, to have been detained in prison after that writ was granted; and should the Supreme Court hereafter confirm the conviction, that court can recommit him for the remaining time. 1 Strange, 531. & 4 Johns. Rep. 292.

The counsel further suggested, that the Sheriff had civil process against the prisoner, and therefore there could be no reason to apprehend an escape. The counsel hoped, at least, that his Honor would admit the prisoner to bail on the commitment by the justice.

Rodman, contra, was stopped by the court.

The Chancellor. It will be unnecessary to take notice of the two last warrants of commitment, because the commitment upon the conviction of the prisoner, as a disorderly person, is sufficient to detain him. The act of the

9th of February, 1788, entitled, "An Act for apprehending and punishing disorderly persons," (1 vol. N. R. L. p. 114.) declares what description of persons shall be deemed disorderly persons, within the provisions of that act, and among others, that "all idle persons, not having visible means of livelihood," shall be so deemed and adjudged. The act further declares, that it shall be lawful for any justice of the peace to commit such disorderly persons, on conviction thereof by his own view, or by confession, or proof, for any time not exceeding sixty days. Such a conviction was stated in the warrant itself, and the prisoner is, therefore, in the language of the *habeas corpus act*, "a person convict, or in execution by legal process."

It is not for me to examine into the legality or regularity of the conviction, any further than to see that the magistrate had competent jurisdiction to convict and imprison in the given case. This court has no general appellate or criminal jurisdiction. It belongs to the Supreme Court to review the errors (if any there be) in this conviction, and the proceeding has already been removed into that court.

I am only to exercise the power given me by the *Habeas corpus* act; & without that statute, I should rather be inclined to think, that this court had no common law jurisdiction over the subject matter. The conviction and imprisonment in this case, are, *prima facie*, good and valid in law, and that is sufficient upon this collateral inquiry. They must be held valid, until quashed or reversed, in the regular course of appeal, by the appropriate tribunal.

Nor does the suing out the *Certiorari*, or giving the recognizance, affect the conviction or the imprisonment. A *Certiorari* is no *supersedeas* to an execution already executed: and if the prisoner cannot have the effect of his writ, until after the sixty days have expired, it is owing to the provisions of the law, which this court cannot control.

The prisoner must, accordingly, be remanded.

On the fourteenth of October instant, and after the expiration of the term of imprisonment under the commitment first above mentioned, the prisoner was brought up again on a habeas corpus, and a motion was made by his counsel for his discharge from the two other warrants of commitment. The counsel referred to that article of the constitution of the United States, directing the mode in which a fugitive from justice from one state into another, shall be demanded by the Executive, (1 vol. N. R. L. p. 22.) and in support of the motion, cited 2 Caines' Rep. p. 213.

The Chancellor, considering that a sufficient time had elapsed since the two commitments in August last, for the Executive of the State of Kentucky to have demanded the prisoner, according to the constitution, and that no such demand appeared to have been made, ordered his discharge.

The prisoner was discharged, but immediately taken into custody by the Sheriff on divers writs, issuing from the Supreme Court, in favor of certain persons in Kentucky; on which writs bail was required to the amount of $50,000.

Supreme Court.

Of the Term of August, 1816.

THE VERDICT OF A NEW-YORK JURY CONFIRMED.

ELIZA M'DOUGAL *vs.* JOHN SHARP.

In an action of slander brought by a young lady of unblemished reputation, against a *rich man*, for charging her with having sworn false in every part of her testimony, given in a cause in which she appeared as a witness, where such slander was repeated by the defendant, and put on the records of the court, in a notice subjoined to the plea after he was convinced of its falsity, and there was a verdict rendered against him in the sittings, for 3,500 dollars; it was held by the court, on a motion for a new trial, that the damages were not excessive.

During the last term, holden at the capitol, in the city of Albany, Henry, as counsel for the defendant, moved the court for a new trial in this cause, on the ground that the damages were excessive. There were several other grounds assumed by the counsel, but on the strong intimation given by the court, they were abandoned.

Emmet contra.

The court, after the arguments of the counsel, unanimously decided, that the damages in this cause, under its circumstances, were not excessive, and denied the motion with costs.

We understand, that the probable amount of taxed costs, on behalf of the plaintiff, is $150, and the costs of the defendant, including his incidental expenses and counsel fees, cannot be less than that sum. *THREE THOUSAND EIGHT HUNDRED DOLLARS* for saying about ten words! Slanderers beware! See the case reported, ante, p. 73.

At the time this case was published, we knew not that this motion was to be made, but understanding since, that some illiberal strictures had been made, by some persons whom we shall not name, for our publishing a case *sub judice*, we were determined to follow the case wherever it might be carried, and let the public know the final result.

To protect the weak against the aggressions of the strong and powerful, and, as far as possible, to afford reparation for the wounded feelings of an individual, are among the most important duties of a jury. In this case we are happy to find the verdict confirmed by the Supreme Court.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday* the 7th of *October*, in the year of our Lord one thousand eight hundred and sixteen—

PRESENT,

The Honorable
JACOB RADCLIFF, *Mayor.*
NICHOLAS FISH, } *Aldermen.*
REUBEN MUNSON, }
JOHN RODMAN, *District Attorney.*
MACOMB, *Clerk.*

GRAND JURORS.

GEORGE HARSIN, *Foreman.*

DAVID ADEE,	WHITEHEAD HICKS,
ROBERT ABBOTTS,	THOMAS B. JANSEN,
JOHN BLOODGOOD,	GARRIT B. ABEEL,
RICHARD BERRIAN,	THOMAS CHATTERTON,
ROBERT BENSON, jun.	ELISHA TIBBETS,
THOMAS S. CLARKSON,	ADOLPHUS WALDRON,
DAVID L. HAIGHT,	LE GRAND CANNON.

PERJURY—FALSE SWEARING.

ROBERT ELWELL'S CASE.

COLDEN & RODMAN, *Counsel for the prosecution.*

PRICE & HAMILTON, *Counsel for the prisoner.*

Where E was indicted for wilful and corrupt perjury, committed in an affidavit, sworn to for the purpose of removing the proceedings instituted by one of the police justices against a vagrant, then in Bridewell, into the Supreme Court, by Certiorari, and on the traverse of such indictment, two unimpeached witnesses, on behalf of the prosecution, (H and P) *expressly swear to the falsity* of a particular statement in the affidavit, which is decided by the court to be material, should the jurors conceive that such statement, *though false*, was not wilful and corrupt, it will be their duty to acquit the prisoner.

Whether the matter contained in such affidavit on which the perjury is assigned, particularly influenced the mind of the judge granting such Certiorari, is immaterial—provided, that, from the nature of the application, the matter was material.

The prisoner, during the last term, was indicted for wilful and corrupt perjury, alleged to have been committed in an affidavit, sworn to by him on the 20th of August last, before the Recorder of the city of New-York. The affidavit on which the perjury was assigned was made for the purpose of removing certain proceedings of Josiah Hedden, esq. one of the Police Magistrates, against one Thomas F. Goodhue, (who had been committed to Bridewell by the said Hedden) into the Supreme Court, by certiorari.

There were three specific charges of perjury assigned in the indictment, on the three following parts of the affidavit:

1. "Sometime last week, and since the arrest of the said Goodhue, this deponent was informed by Thomas G. Prentice, a principal creditor of, and one of the complainants on whose oath the said Goodhue was committed to Bridewell, *that the said Josiah Hedden was his Attorney*, and that if this deponent wished to make any statement of the said Prentice's claim on the said Goodhue, he must speak to the said Josiah Hedden, *Attorney of the said Prentice.*"

2. That in Bridewell, "a conversation took place between Prentice and Goodhue, in which Goodhue denied owing as much as was claimed by Prentice as the amount of his debt: that the said Prentice, and the said Hedden, *at the same time informed this deponent, that if he, this deponent, would secure the said Prentice* $900, *and if a Mr. Smith would pay* $200 *to Prentice, that the said Goodhue should be discharged from prison.*

3. "On the following day" the deponent "was informed by the said Prentice, that the said Hedden had assured him that Goodhue should not be seen by any face of clay."

The affidavit contained several other facts, which, for understanding this case, we deem unnecessary to detail.

Richard Riker, the Recorder of the city of New-York, a witness on behalf of the prosecution, on being sworn, stated, that there is a statute of this state authorising the justices to take up disorderly persons; and he explained to the jury its provisions. That it was represented to him that Thomas F. Goodhue was imprisoned as a vagrant under that act; and on the 20th of August then last, an application was made to him by Wm. M. Price, Esq. the Attorney for the said Goodhue, founded on the affidavit in question (which was produced and read on the trial) for a certiorari to carry the proceedings before the Supreme Court. He stated the facts to the jury upon which it had been his practice to grant applications in similar cases; and one of the principal facts, which he had considered requisite to be stated, was, that the person applying did not fall within the denomination of disorderly persons by the statute. On that occasion, and on the affidavit, he granted a certiorari to carry the proceedings before the Supreme Court, and afterward a habeas corpus, to bring up the body of Goodhue, to be admitted to bail, which was resisted on the ground that he was a fugitive from justice from Kentucky, and proved by affidavit; and Goodhue was by him, the Recorder, under a decision of the Supreme Court, recommitted to Bridewell for six weeks, until an application could be made by the executive of that state to the executive of this, for his delivery.

On the cross-examination of the Recorder, the counsel for the prisoner proceeded to make

a particular inquiry whether the matter in the affidavit upon which the perjury was assigned, above set forth, particularly influenced his mind. This was objected to by Colden, and decided by the court to be inadmissible; but not until the Recorder had answered, in substance, that it was a difficult matter for him to say, what particular part of the affidavit influenced his mind on that occasion, inasmuch as he read the whole, took up the whole, and decided from the whole.

Thomas G. Prentice, of Lexington, in Kentucky, a young gentleman abou 25 years of age, of genteel deportment and manners, but who appeared diffident during the tedious cross examination to which he was subjected, on being sworn as a witness on behalf of the prosecution, stated, that on no occasion did he ever tell the prisoner, that "*Josiah Hedden was his Attorney, and that if he, the prisoner, wished to make any statement of the said Prentice's claim on the said Goodhue, he must speak to the said Josiah Hedden, Attorney of the said Prentice,*" or any thing of that nature or import: for that Hedden never was his Attorney, and he, the witness, never referred the prisoner to Hedden on any occasion.

This witness swore as positively, that the other matter assigned as perjury in the indictment, under the second and third charges above set forth, was wholly false. On his cross-examination, and further examination on behalf of the prosecution, he further stated, on divers particular interrogations by the counsel, the following facts:—Thomas F. Goodhue, by means of letters of credit from gov. Galusha, of Vermont, and gov. Tompkins, of this state, and by other documents produced by him, which letters and documents since his flight were believed, in Lexington, to have been forged, imposed on divers merchants in that place, and swindled them out of money to a vast amount. Among these, was a brother of the witness, whom Goodhue had defrauded of money to the amount of between 13 and $15,000.* He absconded from the state of Kentucky. Prentice wrote to his correspondent, a merchant in this city, named Jones, describing Goodhue, and requesting Jones to endeavor to have him apprehended. An advertisement also was sent to this city by Prentice, offering a reward of $500, or ten per cent on all the money found on Goodhue. The letter sent to Jones also contained a power from Prentice to treat with Goodhue, and endeavor to get the whole or a part of the money out of his hands.

After these documents had been forwarded, Prentice, the witness, came to this city, not only on the business of his brother, but as an agent for other persons in Kentucky, who had been defrauded of money by Goodhue, as aforesaid. On his arrival in the city, he found that Hedden was endeavoring to get out of the hands of Goodhue, by negociation, the money of which he had defrauded Prentice. He understood from Hedden that, before that time, he had received from Goodnue $7600 in cash, and after the commitment of Goodhue to Bridewell, hereafter mentioned, $1200 in Mississippi stock, at fifty per cent discount, as part of the demand of Prentice, which money was afterwards paid him by Hedden, and the stock delivered. After Goodhue was committed to Bridewell, which was in about three days after the arrival of Prentice, Goodhue offered $4,800 to Prentice if he would relinquish his claim; and a memorandum in writing, containing divers sums, was made by Goodhue, showing from whom and from what sources he expected to be able to get the money. This memorandum was exhibited in presence of the prisoner, and a conversation on the subject was had between Hedden, Prentice and Goodhue; but the sum then spoken of to be raised by Goodhue was $4,800.

Having conferred with Hedden principally on this subject, but at different times consulted with all the Police Magistrates, Prentice paid $371 to Hedden—$500 as the reward offered by the advertisement, and, as Prentice conceived, *for the use of the Police Office*, and the remaining $371 to be distributed among counsel, whom Prentice had engaged to assist him in the business, and to certain Police Marshals who had been particularly active in assisting in that apprehension. With regard to the $371, Prentice, at the time it was paid, delivered to Hedden a memorandum, in which he, the witness, had apportioned the money, according as he conceived right among the Police Marshals and counsel; but left it in the discretion of Hedden to make a different apportionment, according as he considered those different persons entitled for the services rendered.

This apportionment contained in the memorandum was stated by the witness, as far as he could recollect, with the names of several persons to whom it was to be paid; but this we do not consider very material. On paying this money, he obtained a receipt from Hedden. He paid Colden $25 for a counsel fee in this prosecution.

Josiah Hedden, one of the Police Magistrates, a witness on behalf of the prosecution, on being sworn, fully corroborated the testimony of Prentice before stated, in relation to the

* We cannot say, for it does not appear in our notes of testimony, that Prentice swore to the following facts: but we extract the following account from affidavits and other authentic documents in the Police Office: that Goodhue presented to Ruggles Whiting, of Lexington, three several bills of exchange forged by Goodhue on Joseph Peabody, of Salem, in Massachusetts; two of 10,000 dollars each, and one of 15,000 dollars, and received the whole money. On presenting the bills to Peabody it appeared that he did not know Goodhue, and never had any dealing with him. This appeared by affidavits then in the Police. The probable amount of all he had swindled from the people at the southward is 50,000 dollars.

three charges of perjury contained in the indictment. With regard to the first charge, he stated, as in confirmation of the testimony of Prentice, that *he never was the Attorney for Prentice* in any case whatsoever. Concerning the last charge, he positively swore that he had never informed Prentice, that Goodhue "*should not be seen by any face of clay.*"*

He fully corroborated the testimony of Prentice, in every particular in relation to the second charge, and that no communication ever took place in Bridewell or elsewhere, wherein *Prentice and himself informed the prisoner, that if the prisoner would secure the said Prentice* $300, *and a Mr. Smith would pay* $200 *to Prentice, Goodhu eshould be discharged ;* nor was there any thing ever advanced by Prentice and himself, in any conversation with the prisoner, which would bear that construction.

Thus far the relation of this witness concerning the *perjury ;* and to this inquiry put by the counsel for the prisoner, whether the witness, previous to the commencement of this prosecution, was not *in a great passion* against the prisoner, he directly replied in substance : that on his return (for it appeared he was absent when the application for the certiorari was made) he felt indignant and much hurt at such barefaced perjury, especially as related to the use which had been made of his name, and the advantage taken thereof in his absence, in the affidavit on which the application was grounded.

He further stated, in answer to the questions put by the prisoner's counsel, in a very close cross-examination, and also to the further examination of the counsel for the prosecution, in substance as follows :—That previous to the 29th of August last, one Jones in this city applied to the Police-office, and exhibited the letter describing Thomas F. Goodhue, as mentioned by Prentice in his testimony. The advertisement also arrived. The letter and advertisement were put into the hands of Hedden, as one of the Police Magistrates, and by means of information *derived from persons confidentially*, he, the witness, found Goodhue at his boarding-house, in Catharine-street. At that time no sufficient authority for his apprehension as a fugitive from justice from Kentucky being in this city, (for it was before the arrival of Prentice) Hedden, for the purpose of getting out of his hands, if possible, the whole or a part of the money of which he had defrauded Prentice, and also for gaining time until further documents could arrive, which might authorise the apprehension of Goodhue, entered into a negociation with him, and treated with him for the restoration of the money. By this means he obtained from Goodhue, as and for Prentice, $7600 in cash, and after the commitment of Goodhue, $1200 in Mississippi stock, at fifty per cent discount, which was afterwards paid and delivered to Prentice as aforesaid. Prentice arrived in this city, from Lexington, as an agent for his brother and other merchants in Kentucky ; whom Goodhue, as was represented, had swindled out of vast sums of money. The negociation was then on foot between the witness and Goodhue ; but Goodhue, having failed in his engagements with Hedden, in relation to certain other sums which he was to advance, and the requisite authority by which he might be apprehended being at hand, Goodhue was apprehended by Hedden, John S. Dusenbury, and others, at a house of ill-fame in this city, late at night, disguissd with an old straw hat, and an indifferent sailor's dress. He was examined by Mr. Justice Hedden, and by him committed to Bridewell.

At this time there were divers affidavits, and other documents in the Police-office, which showed that Goodhue had fled from justice in Kentucky ; *and it was not merely under the vagrant act he was arrested and committed, but also as a fugitive from justice from another state.* This the witness positively swore, and the fact was not attempted to be disproved on the trial. This witness corroborated the testimony of Prentice in relation to the conversation which took place in Bridewell, wherein the prisoner was present. Hedden swore that the specific sum to be raised by Goodhue, which was then the subject of conversation, was $1800.

In explanation of the testimony of Prentice concerning the sum paid by him to Hedden as the reward, he stated, that Prentice, being a stranger in the city, had conferred principally with him on the subject of the apprehension of Goodhue. Happening to be present in the Police-office when the complaint came, Hedden had been more active in that apprehension than any other of the Magistrates. He received from Prentice $371; $500 for the reward offered

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* We apprehend, that on this part of the testimony an example favorable to the illustration of the doctrine, relating to the necessity of *two witnesses*, at least, in perjury, is presented. It seems to have been taken for granted, during this trial, that it was necessary to disprove each charge, assigned as perjury in the indictment, by two witnesses ; and even Colden, in his argument, conceded, that as respected the first and third charges, there was only oath against oath. With much deference, however, we apprehend the true doctrine to be this : that *to convict* in a case of perjury, two witnesses at least are necessary ; but to *disprove the fact* alleged as perjury in the indictment, two witnesses are not required. (Phillip's Evidence, vol. i. p. 108.) Speaking of the crime of perjury, the authority thus proceeds :— "It does not appear to have been laid down that two witnesses are necessary to *disprove the fact* sworn to by the defendant ; nor does that appear to be absolutely requisite."

On this first charge, therefore, Prentice having sworn positively to its falsity, and Hedden having as positively negatived the existence of a fact represented in the affidavit as true, rendering it highly improbable that Prentice should have so informed the prisoner, we humbly apprehend that there was sufficient testimony to establish that charge, according to the rule of law applicable to the crime of perjury. The same remark applies, with equal force, to the third charge in the indictment.

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by the advertisement, and $371 to be distributed among divers Police Marshals who had been active in the arrest, and certain counsel employed by Prentice. At the time this money was paid, Prentice delivered to Hedden a memorandum containing an apportionment of the latter sum, according to the merits of the respective officers, and at the same time, directed him to alter that apportionment should he conceive it to be incorrect.

The apportionment, in part, of this money, had been made according to the memorandum. With regard to the sum of $500 paid as the reward, Hedden swore that the information upon which Goodhue had been apprehended was derived from *confidential sources.* He conceived two or three persons who had thus *confidentially* furnished information to the Police-office, entitled to that money. *Hedden had never any idea of retaining the money, and had determined not to retain it,* though, perhaps, he might strictly be entitled to it by reason of having first taken Goodhue. He had been threatened with a prosecution by a letter received from a counsellor in this city, at the suit of Goodhue, for that money, and thought prudent, at present, to retain it by reason of this claim.

After the commitment of Goodhue for examination, Hedden refused to let Price, as counsel, confer with Goodhue. The witness stated, that this course is conformable to the established practice in regard to prisoners confined in Bridewell. Hedden, however, gave permission to the prisoner, Elwell, to accompany him into Bridewell to see Goodhue.

After the testimony of Hedden the counsel for the prosecution rested, and Price opened the defence.

James Warner, one of the Police Magistrates, sworn as a witness on behalf of the prosecution, on being asked, with much confidence, by the counsel for the prisoner, whether he had not advised Prentice to take a different course from that advised by justice Hedden, answered, that he did not advise to a different course; but in explanation, he stated, that it was the advice of all the Police Magistrates, that Prentice should endeavor to get as much of the amount of his demand out of the hands of Goodhue as was practicable, and let the others pursue their own claim.

It further appeared in the progress of the trial, by the evidence of Hedden and Warner, that neither Hopson nor Warner knew when the money which was taken from Goodhue and deposited in the bank, was taken out and paid to Prentice: but that Hedden, at the request of Prentice, who wanted the money to send to Kentucky, went with him to the bank and there got the money, and it was afterwards counted and paid over to Prentice in the Police-office—That neither Hopson nor Warner knew what sum was left in the hands of Hedden by Prentice to be distributed among the Police Marshals, or what sums they received or when it was paid; Hedden being the sole Magistrate who had the management of this affair.

The cause having been rested on behalf of the prisoner, a great number of gentlemen of the first respectability was called on behalf of the prosecution, who concurred in showing, that Thomas G. Prentice, the witness, was a merchant of Lexington, in Kentucky, of unblemished character, and that his integrity and moral conduct were unquestionable.

After the testimony on both sides had closed, the counsel for the prisoner declined addressing the jury, one of the counsel assuming on himself the responsibility of that course.*

Colden, in a candid argument to the jury, showed the rules peculiar to the particular crime then under consideration, principally deduced from its definition:

1. The matter assigned as perjury must be false.

2. It must be known to the party, at the time, to be false.

3. It must be, in some matter, material to the point to be established, or the issue.

4. It must be sworn before some court or magistrate, competent to administer such oath.

He admitted, that the rule of law applicable to the evidence in perjury, required that two witnesses, at least, should prove the falsity of the oath. He further admitted, that, applying that rule to the evidence adduced in relation to the first and third charges, (as above set forth) the jury would not be authorised to convict the prisoner under those charges, because there was only the oath of Prentice against that of the prisoner. But then he strenuously urged to the jury that the crime of perjury had been fully established against the prisoner by the testimony applicable to the second charge (above set forth) to which he begged leave to call the particular attention of the jury. He particularly alluded to that part of the affidavit in which the prisoner stated that "the said Prentice, and the said Hedden, at the same time, informed this deponent, that if he, this deponent, would secure the said Prentice $900, and if a Mr. Smith would pay $200 to Prentice, that the said Goodhue should be discharged from prison."

The counsel, to this charge in the indictment, carefully applied the rules applicable to this crime, and endeavored to show that this charge was fully supported. He contended, that the

* It has been mentioned to us, by several counsellors who attended the trial, that the reason of this course was, that one or more of the jurors, before hearing the arguments of counsel, or the charge of the court, pronounced the words "*not guilty,*" loud enough to be heard by the counsel for the prisoner. We did not hear, and therefore, cannot vouch for the correctness of the information; had we, the public should know, at least, the name or names of such jurors as will undertake to pronounce before they *have heard the whole, or consulted with their fellow jurors.*

object in this statement (and therein consisted its corruption) was to show the Recorder that the sum required was of an inconsiderable amount.

Should the jury, therefore, believe the evidence, it would be their duty to convict the prisoner. He conjured them to discard all feelings of sympathy towards the prisoner and his connexions, and if the evidence, in their minds, was irresistible against him, not to add to the crime of which he was guilty by a verdict in his favor.

His Honor the Mayor charged the jury that much extraneous matter, which had no relation to the merits, had been introduced in the progress of the trial. How, or in what manner Goodhue was arrested, what the charge against him was, and how the demand originated, for the purposes of this trial, appeared to the court wholly immaterial.

With regard to the first and third charges laid in the indictment, on which the perjury is assigned, these, from the nature of the case, could only be negatived by the oath of Prentice.

The counsel for the prosecution had conceded—and such was the opinion of the court, that these charges were not supported according to the rules of evidence.

That part of the second charge relating to what Justice Hedden and Prentice told the prisoner in Bridewell, claimed the particular attention of the jury. It was the opinion of the court, that this, from the circumstances of the transaction detailed in the testimony, was material to the purpose to which the affidavit was applied; and whether this part particularly influenced the Recorder in granting the certiorari, was wholly immaterial. It is obvious, that in an affidavit several matters may be material, and one only may influence the mind of him who acts therefrom.

But, as applicable to this charge, there was a rule, proper for the consideration of the jury, to which the counsel on behalf of the prosecution had adverted. This rule was, that the oath must not only *be false* but *corrupt*. Under that rule, it would be proper for the jury to consider that circumstance detailed in the testimony, concerning the memorandum in which divers sums in figures were inserted, as the sums which Goodhue was to raise to satisfy the claims of Prentice. This memorandum, it appears, was exhibited in presence of the prisoner in Bridewell; and from the inspection thereof, without attending particularly to all the conversation, might he not have supposed that the sums to be raised were those afterwards stated in his affidavit?

Should the jury even believe that the oath was false, but could bring their minds to the further belief, that he acted under misapprehension or mistake, it would be their duty to acquit him.

The prisoner was acquitted by the jury.

FORGERY.

ALEXANDER B. ATHERTON'S CASE; Indicted with JOHN MILLER.

RODMAN, *Counsel for the prosecution.*
WILSON, *Counsel for Atherton.*

The forgery of a note, not payable in money, is merely a misdemeanor at common law.

Though in general a witness is not bound to criminate himself, yet, a professed accomplice, admitted as a witness on behalf of the prosecution, is bound on his cross-examination, to disclose fully his own turpitude in a criminal transaction, committed in connexion with the person against whom he hath been called to testify.

The defendants were indicted for the forgery of eight bills or notes in imitation of Corporation notes of the city of New-York, thus described in the indictment:

'In Corporation bills of the city of New-York, I promise to pay the Bearer, seventy-five cents, on demand. New-York, Jan. 3d, 1816. By order of the Director.

"D. E. TYLEE."

On the left edge of these forged bills, there are engraved in fine print, these words and figures:

"J. M. 25 Van Damme-street."

The bills, of which the above are an imitation, are in this form:

"The Corporation of the city of New-York, promise to pay the bearer on demand, seventy-five cents.

"By order of the Corporation.

"D. E. TYLEE."

On the left edge of the true bills, is the name of the printer, as,

"T. & W. Mercein, print. 95 Gold-st."

is engraved in fine print.

The indictment contained a count for the forgery of these notes, against the form of the statute, with an intention of defrauding the Corporation of the city of New-York; and also a count for having them in possession with an intention to utter and pass them, knowing them to have been forged. The last count was for the forgery of these bills, *at common law*, with an intention to defraud Daniel E. Tylee. There were several other counts in the indictment for forging and having in possession two bank bills; but, for the understanding of the case, we refer our readers merely to the last count, on which the public prosecutor principally relied.

The defendant, Atherton, is a man about thirty-five years of age, of a decent appearance and of an insinuating address. He is said to be an English lawyer, but in an advertisement printed, if we mistake not, at St. John's (in N. Brunswick) shown to the Reporter during the trial, a man by the name of this defendant, and answering his description, is represented as infesting that province, assuming the characters of a clergyman of the established church,

merchant, school-master, and other characters at pleasure, for the purposes of fraud. He is further represented in that advertisement as an accomplished swindler, and according to our best recollection, as one who under the guise of those characters had committed several thefts. A reward of five pounds is offered in the advertisement for his apprehension.

The defendant Miller, is a common illiterate man, who has been an inhabitant of this city for fifteen years; but on the trial, appeared as void of principle as the other, and equally ready to participate in any villanous undertaking. The only difference between them was, that the latter was destitute of the ability of the former.

When arraigned, Atherton requested to be tried separate from Miller, and on Thursday of the second week he was brought to trial.

It appeared by the testimony of Jacob F. Cisco, who had been employed by Jacob Hays, the high-constable of this city, to arrest Atherton, that on or about the 23d of September last, he arrested this defendant in Park-Place; Cisco first saw him running in Barclay-street, near the corner of Church street, and pursued him until he overtook him. He was carried to the Police and searched, and six of the bills laid in the indictment found in his possession. The several examinations of the defendant in the Police, taken down by way of question and answer, were then read in evidence. To the first interrogatory, "Where was you born, and what your age," he replied, "Not at present having access to any legal adviser, nor the opportunity of conversing with Mr. Tylee, I beg to avail myself of the privilege of the laws of America to remain silent." He referred to this answer in several other parts of his examination; but in accounting for his possession of the bills, he stated that Tylee had given him permission to make the bills, and that he had promised Tylee to detect a gang, as soon as he discovered them. In one of his examinations he further stated, that he received the bills of Miller to show them to Tylee.

Daniel E. Tylee, a witness on behalf of the prosecution, on being sworn stated, that some time in the month of June last, Atherton came to his house, and in confidence informed him that he had been applied to by a gang in this city, who wished him to counterfeit the name of Tylee on Corporation notes. Being anxious for their detection, he said, that he had led them to believe that he was favorable to their designs and would agree to their proposals. His object was to detect those persons in their unlawful undertaking; but to do this, he found that it would be actually necessary to forge the name of Tylee, which he said he could do. Before, however, he proceeded to the act, he conceived that he ought to be justified in law otherwise he might be subjected to a criminal prosecution.

At this time, Atherton exhibited to Tylee several counterfeit Corporation notes, which he said had come into his hands from the gang aforesaid; and Tylee, in his testimony, did not know but these notes were of the same description as those laid in the indictment.

The defendant, under the above representations and assurances, requested leave of Tylee to use his name for the purpose aforesaid. He also stated, that it would be necessary for him in the progress of the business, to counterfeit the names of Franklin and Pintard, two other persons whose names were subscribed to Corporation notes then in circulation. He inquired of Tylee, whether he could not give him liberty also to make use of their names.

Atherton being a stranger, Tylee hesitated much at these extraordinary proposals, but not knowing but that the motives of Atherton were pure, and that he was sincere in his professions, and considering further, that if they were not, an abrupt denial might be the means of defeating the detection of a gang which actually did exist in this city; he, at length, agreed to suffer Atherton to make use of his own name and the others, under the express understanding and agreement, that the defendant would give him notice by letter of a meeting of the gang, which the defendant represented would take place the evening of that day. It was further expressly understood, that the notes thus to be counterfeited were to be used merely as a lure to the persons composing the gang, and were not to be put in circulation. The understanding of Tylee also was, that the notes to be counterfeited were to be in the form of the true Corporation bills.

Tylee, in the course of the interview, suggested to Atherton, that should the persons composing the gang ascertain that he resorted to the house of Tylee, it might excite their suspicions, and it was thereupon agreed, that any further communication between them should be in writing. The defendant informed Tylee, that he resided at No. 23 Jay-street, and the parties separated.

Tylee did not receive any further word from the defendant, until two days thereafter, when he received a letter from Atherton, stating that by reason of some disappointment, the contemplated meeting did not take place at the time.

Immediately after the interview with Atherton, Tylee went to the Police-office and disclosed the whole affair. The Magistrates of that department approved of the proceedings.

Tylee and all the Police-officers, were held in readiness for the greater part of that night, to come upon the gang as soon as notice should be received from Atherton.

Not receiving the notice of the meeting which Atherton stated would take place, the suspicion of Tylee and the Police Magistrates were excited, and the officers of that department

kept on the alert. Tylee went to the house in Jay-street, and found that the defendant boarded but did not lodge there. The next letter which Tylee received from Atherton was several days after the reception of the first. In this letter the defendant stated, that if Tylee wished an interview, he might obtain one at a particular boarding-house in this city, named in the letter; but no particular time was designated. This letter contained two counterfeit corporation notes, and Mr. Tylee did not know but they were of the same description as those laid in the indictment. The defendant stated further, that there were two persons on whom he could fix the forgery of those bills, but did not name or describe them.

A short time after the receipt of this letter, Tylee went to the boarding-house appointed by the defendant, accompanied by Josiah Hedden, Esquire, one of the Police Magistrates, and found that the defendant had been there but a short time before.

From this time, every effort was made on behalf of the Police to arrest Atherton, which was finally accomplished in the manner above related.

A fuller and more candid disclosure of every fact and circumstance, whether militating against, or in favor of, the defendant, we have not heard, than that made by the intelligent witness last named; and seldom have we seen a witness so fully impressed with the sacred obligations of an oath.

John Miller, indicted with the defendant, was called and sworn as a witness on behalf of the prosecution. This witness stated, that on or about the first of June last, he first saw Atherton and became acquainted with him at the corner of Washington and Murray streets, where he attended the grocery store of one Parkhurst. The defendant at that time called himself *Bunting*, and he was called by that name in the testimony of Miller. A short time after this acquaintance, Atherton conversed with Miller concerning setting up a store and issuing bills. He told Miller that money might be made, and requested Miller to procure an engraver, as he was a stranger. After a number of interviews between them, Miller went to one Austin G. Reynolds,* a copper-plate printer, with whom he was acquainted, and engaged a plate for the description of bills laid in the indictment. There was another plate, second-handed, which was procured by Miller on the information of Reynolds. Miller also procured the paper at an office in Wall-street, and sometimes Miller, and at other times Atherton, furnished money to pay for the plates and paper.

After procuring this apparatus, Miller one day was introduced into a room above the grocery kept by Atherton, and saw ink of different kinds, and several corporation notes counterfeited against Franklin and Pintard. Atherton afterwards came to the house of Miller, and in a back room, signed the name of Tylee to notes of a great amount. The defendant represented that he was about going to Boston, and requested Miller to repair his chest, which he was to take, after which he took out of his pocket a small package of the corporation notes to the amount of about $20, and told Miller that he made a present to him of what was contained in the package. At the same time, Atherton delivered Miller a similar package for a man by the name of Pamerlee, who called on Miller a short time afterwards and received the same. It appeared, that at other times, Miller received other sums in these counterfeit bills of Atherton, and had passed a number.

On the cross-examination, Wilson inquired of Miller, whether when he passed the bills, he knew them to be counterfeit.

Rodman objected to the inquiry, on the ground that it was improper to put a question to a witness, the answer to which might tend to criminate himself.

By the Court. This witness has been introduced as an accomplice in this transaction. In his examination he has shown himself to be such; he has commenced his relation, and if in proceeding through the whole, he necessarily discloses his own turpitude, this arises from the situation in which he has been placed by the public prosecutor. Though it appears to the court that the inquiry is useless, by reason of what has already been disclosed, yet the defendant no doubt has a right to a full disclosure.

It appeared by the further examination of this witness, that about $2000 in counterfeit notes were struck off, and that Miller saw Atherton several times signing them with three different names. The defendant informed Miller, that he generally carried the bills in his sleeve for the purpose of concealing them.

George Bradford, a witness on behalf of the defendant, on being sworn, stated, that in the latter end of June, the defendant informed him that he had a clue to a certain gang of counterfeiters in the city, which it was his object to detect and bring to punishment. He represented, that being a stranger in the city he had been imposed on by having several spurious corporation bills passed to him, which he exhibited, and gave one to Bradford to put up in his store that he might be able to detect persons offering such. The defendant also stated

* In justice to Reynolds, who was not sworn on the trial, we think proper to state, that it had been for sometime known to the Police that there was this plate last above-mentioned, at a house in Beekman-street. As soon as Miller had applied to Reynolds, he applied to the Police for direction. He was instructed to refer Miller to the person having that plate, and in striking off the bills, Reynolds acted under the advice and directions received from the Police. Villains do not always know the ground on which they stand.

to Bradford, that his views in this city were to procure a school, and Mr. Tylee corroborated this part of the relation of this witness, by stating, that the defendant made the same disclosure of his views at the time of the interview aforesaid.

Wilson urged to the jury, that independent of the testimony of Miller, the circumstances of guilt were not sufficient to found a verdict against the defendant. Had the designs of the defendant in this transaction been fraudulent, he would not have sought an interview with Tylee, disclosed his purposes, and left his address. This was the very means to hasten detection and insure defeat; and from the education and appearance of the defendant, we must conclude that he is, at least, a man of ordinary discretion. The counsel strongly contended, that the testimony of Miller, from the peculiar situation in which he stood, from his own showing, from his inconsistent statements, was not entitled to belief. It is true, he is a competent witness in law, but the jury was to judge of his credibility. In this case, the relation of this witness is not corroborated by a single fact or circumstance in the other testimony.

Rodman contended, that the whole conduct of the defendant in this transaction, was the result of subtle artifice. He resorted to Tylee for the double purpose of lulling him into security, while he, the defendant, might have time to accomplish his designs; and by obtaining the consent of Tylee, the defendant prepared for a justification of the forgery on the ground of a license. In changing the face of the notes, and making them payable in *Corporation bills* instead of *money*, the defendant was actuated by the design of evading the punishment of the State-prison, in case he should be ultimately detected.

The counsel ably recapitulated the circumstances of the defendant's guilt, and contended that the testimony of Miller was plain, consistent, and uniform in itself, and was corroborated by the other evidence. The flight of the defendant when about being arrested, his studied answers to several interrogatories in the Police, his silence to other inquiries, and above all, his conduct detailed in the testimony of Tylee, all was wholly inconsistent with his innocence.

His Honor the Mayor charged the jury, that the charge contained in the last count of the indictment was a forgery at common law, and amounted merely to a misdemeanor. Should the defendant be found guilty, the court would not have the power of inflicting a higher punishment, than imprisonment in the Penitentiary for the term of three years. The offence consisted in forging notes in imitation of Corporation bills, and from their tenor, no person was rendered liable but Daniel E. Tylee.

Much had been said by the defendant's counsel against the testimony of Miller; and it is strenuously urged, that his testimony is not entitled to belief. It is no doubt the province of the jury to credit or discredit him as they shall think proper. If reliance is to be placed on his testimony, it is fully established that the defendant has been concerned in counterfeiting notes in imitation of Corporation notes to a large amount, and passing a number of them to Miller.

The testimony of a professed accomplice, standing alone, cannot be relied on with safety; but if such testimony is corroborated by facts and circumstances in the case, or if intrinsically it should bear the stamp of truth, then it is entitled to credit.

Divesting this case entirely of the testimony of Miller. and recurring to that of Tylee, we find that the defendant was never in fact authorized by Tylee to sign notes of the description laid in the indictment. The understanding of Tylee was, that the notes to be counterfeited were the real Corporation bills, and the license was given under the express engagement on the part of the defendant to give notice to Tylee of a meeting of persons engaged in counterfeiting. No notice was received, and although the defendant afterwards designated a place for an interview, it appeared that he was absent. The defendant, therefore, must be considered as acting wholly without authority. In his examination, we find that he endeavours to build a justification on the authority derived from Tylee.

Should the jury believe this to be a contrivance of the defendant, for the purpose either of lulling Tylee into security, and affording the defendant an opportunity of carrying his designs more effectually into operation, or, that the defendant contemplated, in case of an ultimate detection, that he should be able to plead this license in his justification before a jury, surely, he ought not to be allowed, on this occasion, thus to avail himself of his own fraud in his defence.

The circumstance of his flight from Cisco, when on the eve of apprehension, operated strongly against him.

With regard to the testimony of Miller, it is plain to every man that such a witness must necessarily be considered under the influence of favor: but if from his appearance, from the manner of giving his testimony, his consistency, or from the intrinsic nature of his whole testimony, of all which the jury are to judge, it appears that he is correct in the material part of his statement, he is entitled to credit.

The defendant was found guilty by the jury.

On the last day of the term, the prisoner was put to the bar and received his sentence. The court, after stating the prominent facts in his case, observed that they had inquired into his conduct and character, independent of the charge on which he had been tried. The court regretted to say, that the account they had

received was very unfavorable. The court considered the prisoner a dangerous man in the community. The offence on which he had been convicted, was cunningly and artfully devised, for the purpose of pleading the license of Tylee in justification, and evading the punishment of the State-prison in case of detection.

Considering the enormity of the offence, the court deemed it their duty to inflict a punishment on the defendant to the extent of their power.

The defendant was accordingly sentenced to hard labor in the City-Penitentiary three years.

PERJURY.

THOMAS GILBERT'S CASE.

RODMAN, *Counsel for the Prosecution.*
WILSON, *Counsel for the Prisoner.*

On the recovery of a judgment before one of the Assistant Justices in and for the city of New-York, before the plaintiff had exhibited proof that the defendant was a person *not having a family in this state*, the defendant claimed his exemption from execution, and, in support of such claim, swore before the Justice, in presence of the plaintiff, that he, the defendant, *had been married three weeks;* it was held, that this was an oath administered before a magistrate having competent authority to administer such oath, under the statute.

The prisoner, a black, during the last term, was indicted for wilful and corrupt perjury, committed before Samuel Trumbull, Esquire, Assistant Justice of the fourth ward court, *on the trial of a cause*, wherein one William Molineux was plaintiff, and the prisoner the defendant, on the 31st day of August last.

The perjury, assigned in the indictment, was that the prisoner, *on the trial of the said cause*, swore, that *he had been married three weeks before that time to one Catharine Ferguson.*

It appeared in evidence, that on the thirty-first day of August last, the prisoner, being brought before the justice, on a warrant at the suit of Molineux, who was present, confessed a judgment to a small amount, and immediately claimed his privilege from execution, on the ground that he was a man of a family. The plaintiff offered no evidence to rebut this allegation and the justice administered an oath to the prisoner, who swore that he had been married three weeks, to one Catharine Ferguson, by the rev. Mr. Williams.

It appeared, by the testimony of Mr. Williams, that the prisoner came to his house, *after dark*, the same day the oath was taken, and was married by him to Catharine Ferguson.

By the subsequent testimony, it appeared that Ferguson, the husband of this woman, was in state-prison at the time of this marriage, and that the prisoner had lived with her some time before. The falsity of the oath was clearly established, and the jury, under the charge of the court, found the prisoner guilty.

On the last day of the term, Wilson moved in arrest of judgment, and for a new trial, principally on these grounds:

1. The oath administered by the justice to the prisoner, was extra-judicial: the justice had no authority under the statute, to administer such oath. The proceedings before a justice, are regulated solely by the statute, from which he has no right to depart.

2. In this case, the *onus probandi* first lay on the plaintiff to show that the defendant was not entitled to the exemption from execution which he claimed; and all that could have been legally required from the prisoner, was to *claim and allege* his exemption from execution.

To this point the counsel cited 2 N. R. L. p. 377.

3. It is alleged in the indictment that the oath was administered *on the trial of the cause*; the evidence is, that it was after the cause was terminated.

It was further urged, in support of the motion for a new trial, that the oath taken, was not wilful and corrupt, because the prisoner having lived with Catharine Ferguson, supposed that he was a man of a family, as much as if he had been actually married.

Rodman, contra.

The court decided, that the plaintiff being present at the time the oath was taken and making no objection, the oath must be considered as having been taken by consent. It also appeared, that the oath taken, on which the perjury is assigned, and the trial of the cause were, to all practical purposes, simultaneous.

The principal question related to the merits. It had been urged, by the counsel for the prisoner, that at the time this oath was taken, the prisoner believed himself a married man, because he had lived with Catharine Ferguson some time before. But this woman had a husband then living, within the knowledge of both parties, so that there could have been no marriage, which the law regards, between this woman and the prisoner.

The marriage, which took place the evening of the same day in which the oath was administered, shows that the prisoner himself did not consider that there had been a previous marriage. This act furnishes conclusive evidence of a consciousness of guilt, on the mind of the prisoner, at the time the oath was administered.

The court denied the application, and sentenced the prisoner to the state-prison four years.

ROBBERY—GRAND LARCENY.

JOHN ANDERSON & JOHN WILLIAMS' CASE.

RODMAN, *Counsel for the prosecution.*
N. B. GRAHAM, *Counsel for the prisoners.*

To snatch away an article from the person of another, unless a struggle ensues between the owner and thief, or some personal injury is inflicted on the former by the latter, is not a robbery.

The prisoners were indicted for a robbery committed on John Hinton, of a gold watch of the value of $50. The indictment also contained a count for grand larceny.

It appeared in evidence that Hinton, a gentleman about seventy years of age, kept a grocery, at the corner of Cherry and Montgomery street. The prisoners came to the shop, and called for a pint of beer, and while one of them was cavilling with Hinton concerning the pay, probably for the purpose of diverting the attention of the old gentleman, the other lay over the counter, and reaching his hand, suddenly snatched the watch from the fob of Hinton, and both the prisoners immediately fled out of the store.

Hinton pursued and cried for assistance, and the prisoners were soon after apprehended. It appeared that Williams fled into a shipyard and hid in a saw-pit, from whence he was drawn out by a young man named James Sheffield. On being brought where there was a collection of people, Williams dropped the watch among the crowd.

Graham contended to the court that the crime, disclosed in the testimony, merely amounted to grand larceny. Hinton was not put in fear, and no personal injury was inflicted on his person.

Rodman, contra, first contended that in order to constitute a robbery, it was not necessary that a party should be actually put in fear, provided that personal violence was offered. However after referring to an authority (2 East's C. L. p. 708) the counsel admitted that it was necessary, either that some struggle should have ensued, or, that some personal injury should have been inflicted on the owner.

The court so charged the jury: the prisoners were found guilty of grand larceny, and sentenced to the state prison for five years each.

FRAUD.

DINAH PERRY'S CASE.

RODMAN, *Counsel for the Prosecution.*
N. B. GRAHAM, *Counsel for the Prisoner.*

Where P represented to L that she lived with N, and that she would take an article, which L had for sal , home to N, her mistress, and shortly return such article or the money, and afterwards she returned neither; and it appeared, that at the time P made such representations, she did not live with N, it was held, that such false representation, did not fall within the statute against obtaining goods by false pretences.

The prisoner was indicted, under the statute, for obtaining a pair of shoes of George Lee by false pretences; and the indictment alleged that the prisoner represented that she lived with a Mrs. Newton, who sent her for the shoes.

It appeared by the testimony of Lee and Newton, the witnesses on behalf of the prosecution, that on the 28th of September last, the prisoner came to the shop of Lee, in Greenwich-street, and called for a pair of morocco shoes, stating that she lived with Mrs. Newton, who resided but a short distance from Lee, and that if he would suffer her to take the shoes, she would carry them to her mistress, and if they suited, she, the prisoner, whould return the money, otherwise the shoes.

The prisoner not returning, Lee went in pursuit, and found that the prisoner did not live with Mrs. Newton, but had embarked in a sloop to go up the North River, and he took the shoes from her possession.

Graham submitted to the court whether the indictment was supported; inasmuch as the indictment stated that the prisoner represented to Lee, that Mrs. Newton had sent her for the shoes, whereas no such proof was adduced.

Rodman contra.

His Honour the Mayor charged the jury that the offence of obtaining goods by false pretences, under the statute, was not supported by the testimony in this case. This was not a false representation, against which ordinary prudence could not guard. Had the prisoner made use of any artifice or circumvention, whereby she had obtained the property on the credit of Mrs. Newton, then her offence would have come within the statute; but, according to the testimony, it appeared, that by a resort to a falsehood, merely, the prisoner obtained the property on her own credit.

A conviction on this charge, on the testimony adduced on behalf of the prosecution, would furnish a precedent in similar cases, and the court, therefore, advised the jury to acquit the prisoner.

She was acquitted by the jury.

GRAND LARCENY—MISDEMEANOR.

ZENO CARPENTER AND MARY CARPENTER HIS WIFE.

RODMAN, *Counsel for the prosecution.*
WILSON & N. B. GRAHAM, *Counsel for the prisoners.*

A prosecutor, who appears before the court, and in his relation concerning a felony committed, necessarily discloses his own infamy, will be recognized by the court for his good behaviour; and all witnesses appearing on a trial, in which gross corruption is manifested, who, by their own showing, are disorderly persons, will be delivered over to the Police to be dealt with according to law.

Mary Carpenter, during the last term, was indicted for grand larceny, in stealing a pocket-book containing $125 in bank bills, the property of Patrick M'Looy: and Zeno Carpenter, and the same woman, were indicted for keeping a disorderly house.

On the traverse of these indictments, a scene of corruption and indecency was disclosed, which we forbear to present, and shall content ourselves in laying the prominent facts before our readers, in a general point of view. On

the last day of August, during the night, the prosecutor lost his money at a house of ill fame, at Corlaer's-hook, kept by Mary Carpenter, who had, the evening preceding, invited him there from another house of the same description, in the neighborhood, kept by one Mrs. Hewson. In the morning, missing his money, the prosecutor went to the room of Mrs. Carpenter, who opened the door, and the prosecutor gave an account of his loss to the woman and her husband, then in bed, but received no satisfaction from either. The husband pretended he was unwell, and did not wish to be disturbed.

Testimony was produced on behalf of the prosecution, but from a very impure source, that during the night, Mrs. Carpenter came into the room in which the prosecutor slept, and stole the pocket-book; and the next day, after a search was instituted by the prosecutor, she offered Jane Austin $5 and a silk frock, if she would not expose this prisoner. Counter testimony, to impeach the testimony of Jane, was produced, on the part of Mary Carpenter, from a source as impure; and after the arguments of counsel, and the charge of the court, the jury acquitted Mary Carpenter from the felony.

The same testimony was produced against the two defendants, on the charge for keeping a disorderly house, with the additional fact, that after his wife was apprehended for the felony, the husband offered to pay the landlord the rent of the premises hired by his wife, if he (Carpenter) might be permitted to take away the goods.

Several witnesses were produced on the part of the husband, to show that he had separated from his wife some time ago, and boarded at a different place.

His Honor the Mayor charged the jury, that if they believed that the husband was directly or indirectly concerned in this establishment, it would be their duty to find him guilty.

The jury immediately found both defendants guilty.

After the traverse of the indictment for the felony against Mary Carpenter, the court, observing that the case disclosed a scene of gross corruption and indecency, ordered that Patrick M'Eooy be recognized in a sufficient sum to keep the peace; and that three witnesses, sworn on the trial, women of ill-fame, be delivered immediately to the Police, to be dealt with according to law.

Zeno Carpenter was fined $20, and his wife sentenced to the City Penitentiary one year.

SUMMARY.

GRAND LARCENY.

Charles Willis, a young man about twenty-three years of age, was indicted, tried and found guilty, on two indictments for grand larceny, and one for petit larceny, in stealing divers articles of clothing, to the amount of about $530, the property of Daniel Smith.—This gentleman kept two clothing stores in this city, and the prisoner had been in the habit of loitering about one of the stores, kept by a young man with whom he was acquainted. He had frequented the store about eighteen months, in which time he had stolen property to the amount of $1000, or more. About the middle of September last, Smith having put the goods contained in both stores into one, the prisoner came one day and stole a pair of pantaloons, and concealed the same under his surtout. Smith missed the article and charged the prisoner with the theft. He was searched, and the pantaloons taken out of his possession. On being carried to the Police, he voluntarily made a full confession of his stealing the other property at different times.

His father resides at New-Brunswick, in New-Jersey, and his sister, who is said to be an industrious amiable young woman, attended his trial, and witnessed the miserable situation of her brother, at which she was much affected.

His sentence is suspended, and we understand he is to be sent out of the country.

George Waters, on the night of the 9th of September last, broke open the store of Gabriel Tompkins, of the town of Greensburgh, Westchester county, and stole dry goods to the amount of $35. He brought them to this city, and represented to John M. Lester, that he had been shipwrecked on Long-Island, and had received the goods, which were taken from the bales, as his wages. He told several other absurd stories about the goods, which were taken out of his possession. The owner shortly after appeared, and indentified a number of the articles.

Henry Johnson, a black, in the latter part of last month, in the night, stole a yoke of oxen, of the value of $160, the property of Martin Silber, from a pasture about two miles out of the city. The prisoner drove the oxen and offered them for sale to John Smith, alleging that he had brought them from Stephentown. He afterwards drove the cattle to this city, and tried to engage a butcher, to kill and dress them. It appeared that Smith knew the cattle, and giving information to the owner, the prisoner was pursued and apprehended.

The two prisoners last named, were each convicted of Grand Larceny, and sentenced to the State Prison for five years.

William Brophy, about ten days before his trial, was engaged by William Hume to take a trunk, containing the clothes and other articles of Hume, of the value of $50, from the eastern coffee house, to a vessel in which Hume was about to embark. The prisoner obtained possession of the trunk and carried it to the house of one Mrs. Lovett, and broke it open and disposed of a number of the articles.

Jane Pearce, stole divers articles of clothing, of the value of $36, the property of Ansel W. Ives, on the 15th of September last. She was apprehended by Azel Concklin a constable, and the property taken out of her possession.

The two prisoners, last named, were convicted of Grand Larceny, and with John Hammond, convicted last term for the same offence, each sentenced to the State Prison three years and a day.

PETIT LARCENY.

Chauncey Lozee, John Batisman, Francis La Bant, John an Indian, Thomas Brundage, Andrew Anderson, Henry Clark, Patrick Curran, Titus Butler, Thomas Stanton, Timothy Tool, Robert Wilson, Sally Little, John Bowering, Joseph Harrington, Matthew Niven, Ann York, Sylvester Stoddard, George Hudson, John Lozier, Stephen Johnson, Susannah Johnson, Mary Williamson, Nancy Sherwood and Thomas Davis, were convicted of Petit Larceny, and the first sentenced to the City Penitentiary three years, the second eighteen months, the third one year, the nine following for nine months each, the seven following for six months each, John Lozier for the same time to Bridewell, and the remainder to the Penitentiary for shorter periods of time except the last, who was fined $100, and to stand committed until he pay the fine.

The whole amount of time for which the convicts for the Penitentiary, including Alexander B. Atherton, were sentenced for this term, is twenty years: that is, the City have the labour of twenty persons for one year each, or 6220 days work for the public; equal to about $3000.

Thomas Davis, above named, is a lad sixteen years of age, and was represented on his trial, as the *pet* or darling of his mother, and as being engaged in no business but running about the streets.

Parents, read the following account of this young man and behold the awful consequence of an undue indulgence of children in idleness. May you profit by the example.

The Prisoner was indicted for Grand Larceny, in stealing a pocket book containing $13. 72, the property of Joseph La Mott.

It appeared by the testimony of La Mott, who is a mulatto, and as we judge from his language a French West Indian, but who was proved to be a man of good character and industrious habits, that on the 25th day of September last, he was attending an auction in Vesey street.

He had $20 in his pocket book, and after he had purchased an Umbrella, took from his pocket book $5 in presence of the prisoner, gave it to the vendue-master and returned the pocket book into his coat pocket. In a short time, he felt some person cautiously draw out his pocket book, and, turning suddenly round, saw the prisoner, near him, suddenly put his hand into the fore part of his pantaloons. La Mott did not immediately charge the prisoner with the theft, but kept his eye fixed on him and observed every sign of guilt in his countenance and actions. In a few minutes, the prisoner tried to avoid La Mott by walking off and endeavouring to get among the crowd; but La Mott followed him close, and observing the pocket book under the fall of his pantaloons, seized it and took it out of his possession. Even under these glaring circumstances, the prisoner had the hardihood to deny the theft, and allege that he had found the pocket book.

It seems that he refused to follow the advice of La Mott to go about his business; for La Mott having gained his property, was not anxious to pursue the felon. Some of the bystanders, however, learning the enormity of the prisoner's conduct, interfered, and he was brought to the police.

Some considerable efforts were made to save the *pet* from the state prison; and we could not observe, but with utter abhorrence, the attempt to put a different language in the mouth of La Mott in his account of the affair, in a previous conversation into which he had been designedly drawn, from that in which he spoke on the trial. One of the witnesses sworn on this trial, who shall be nameless, will understand.

The reverend gentleman, Thomas Miller, who corroborated the relation of La Mott and who had advised the mother to take care of that child, deserves our unqualified approbation. A layman who hears a witness like this, in a court of justice, give a true, plain and impartial relation, without favour or affection, cannot but be impressed with a veneration for the sacred character of a divine.

The jury believed him, they believed La Mott; but leaning on the side of mercy, according to the recommendation of the court, the prisoner was found guilty of petit larceny only.

Chauncey Lozee, above named, had but lately been liberated from the state prison, to which he had been sentenced twelve years for passing counterfeit money. Walking along one of the streets in this city, with one of his companions, he suddenly snatched from a young lad, about sixteen years of age, a pocket book, containing $9.75, and fled. The lad pursued and cried for assistance, and, at length overtook the felon, and carried him to the Police.

Timothy Tool, a miserable vagabond, about sixty-five years of age, came to the house of a lady in this city, and begged for victuals. After she gave him the victuals, he requested permission to sit by the door and eat. She assented; but while she had stepped out of the room, to attend to some other matter, the prisoner stole one of the candlesticks and put it into his wallet. The candlestick was missed and taken from his possession.

While the excellent institutions for the poor, provided by our corporation, exist, vagrancy and common beggary ought not to be encouraged.

False notions of charity may ultimately have the effect of filling our streets with such wretches as are allowed to straggle through the principal cities of Europe. Every exertion should be made by our police, and our citizens should aid in the exertion, of preventing such disagreeable spectacles, as are presented, on every side, in the streets of London and Paris.

Francis La Bant, a French vagrant, went into one of the cellars in Fly-market, and stole a quarter of beef, and lugged it off to a house, at a considerable distance from the market, where he saw a black woman, and requested permission to deposit the burthen until he could get a wheelbarrow. By inquiry, the butcher's boys who had missed the beef, traced it to this house. Application was made to the police, the Frenchman was seized in the streets, and the marks of the blood and tallow of the beef discovered on his coat.

John Bowering and *Joseph Harrington*, two boys of a miserable, squalid appearance, were indicted for grand larceny, in stealing a horse of the value of $15 the property of Thomas Thompson. The horse, being *rather thin in flesh*, was put by the owner, who is a black man, on the commons above the new powder-house and near Broadway. The boys caught the poor beast and rode him to their dwelling in Henry-street, provided accommodations and procured Doct. Lewis Long, a celebrated farrier, to administer the requisite medicine for his recovery. They also tried to sell the creature. The doctor, a black, was introduced as a witness on behalf of the prisoners, and excited much merriment. It appeared by his testimony, that the boys offered him the horse to ride on Long-Island, on a visit to his patients, but that he rejected the offer on the grounds, that the horse would not be able to carry him, and even if it did, he should make so ludicrous an appearance on *Rosinante*, that the boys would stone him. The poor creature was so low that he was beyond the skill of the doctor.

The boys were convicted of petit larceny.

Patrick Curran, with several other wretches, during the last month, in the evening, went into the house of John Bogart, a poor black at Manhatten-Island, and obtained leave to stay during the night. The next day they were very solicitious to board and actually staid several days, promising to make compensation to Bogart. Watching their opportunity in his absence, they stripped the house of almost every article which they could carry off. Among these, there was a large bible.

When the prisoner was apprehended, a jacket, stolen as aforesaid, was found on him. He was indicted and tried for grand larceny, but convicted of petit larceny only.

RECEIVING STOLEN GOODS.

John Hendricks was indicted, tried, and found guilty of receiving a gold watch, of the value of $110, the property of John Richards, stolen by John Hammond, he, the defendant, knowing it to have been stolen. It appeared that Hammond stole the watch from the ship commanded by Richards, and carried it to Hendricks with whom he boarded, and informed him how, and where it was obtained.

Hendricks received it, and concealed it under the counter of a grocery store which he kept, from whence it was taken and delivered to Robert Philips, one of the police officers.

Hendricks was fined $50, and imprisoned one month.

MARINE COURT.

Before HENRY WHEATON, ROBERT SWANTON, & JOHN B. SCOTT, Esquires, Justices.

SHAVING—ASSAULT AND BATTERY.

PETER DUFFIE,

vs.

GEORGE MATHEWSON, RICHARD CLARK, JAMES M'NIGHT, *JOHN MARKWELL*, EDWARD CRAW, GEO. JENKINS, WILLIAM ASKEW, THOMAS MAXWELL & DANIEL MARSHALL.

CAINES, *Counsel for the Plaintiff.*
FAY, *Counsel for the Defendants.*

The captain and crew of a vessel on the high seas, have no right to permit or excite old Neptune to shave a passenger and immerse him in a tub of water, contrary to his will.

This was an action of assault and battery, alleged to have been committed on board the British ship Thomas, of Lancaster, while on the high seas, of which ship Mathewson was the captain, the other defendants seamen, and the plaintiff one of the passengers.

It appeared that the ship came from the chalky cliffs of Albion, with a number of passengers, and arrived on the banks of Newfoundland. The sons of the deity who rules the wide domain, through which they had past in safety, with joy beaming in every eye, met and conferred. By a recurrence to ancient legends, coeval with the common law, and, among them, of greater validity, it was found, that as

often as a landsman came in view of the Banks, before them, he must produce a bottle of old Cogniac or rum, as an acceptable sacrifice to Neptune.

The nature of the sacrifice was explained to the landsmen, and the greater part complied with a requisition, sanctioned by immemorial usage; the defendant with others refused.

Whereupon the seamen invoked the God, with sad complaints: "Oh! omnipotent father, King of the ocean, behold the rebellious sons of Terra, who have dared to intrude into thy dominions, refusing to bend before thy divine altar, and to render to thee an accustomed libation. Their beards, Oh! father, are long, uncouth and indecent; retained by them in defiance of thy laws, and in derision of thy divinity."

The father of ocean heard, and lifted his awful head sublime above the waves, attended by the Tritons, tha Nereides, and all the daughters of the azure main.

He saw his children, and thus responded to their complaints, through a brazen trumpet, whose reverberations shook the distant promontory of Chapeau rouge, and re-echoed through the spacious bay of Placentia: "Carry these impious mortals from my presence—behold their beards, which they dare to retain in despite of my authority. They shall be shaved."

"Sic fata sinant."

He said, and taking his razor and shaving-box from his car, while Amphitrite held his horses, he seized the prow and ascended by the head-rails into the lofty ship. His presence inspired his children with joy. But while imparting his commands, through his brazen trumpet, to the crew, the landsmen below trembled. "Bring hither that tub, and fill it with sea-water." 'Twas done. "Bring forth the long-bearded tribe one by one." The command was obeyed; but Duffie, when it came to his turn, was inclined t be refractory, and resisted—But who can resist, when Gods command?

The razor used by his godship, was manufactured in the caverns of Ætna, by one of the Cyclops, from an iron-hoop; and, though somewhat *rough on the edge*, did good business.

Held above the tub, Duffie underwent the operation with streaming eye, while the most unsavoury smell from the lather entered his nostrils. As soon as the office of the razor was accomplished and the awful oath, which binds even Gods above, was administered, the tub below received him; the ceremony was done, and the God descended into the bosom of the "vasty deep."

It appeared that a lady passenger, named Ann Jones, was subjected to the same ceremony, the humor of which was enjoyed by Duffie, in common with the others. Markwell personated Neptune, and the captain acted in the capacity of an assistant to the deity, and was aiding, abetting and assisting in the ceremony.*

After the arguments of the counsel, Mr. Justice Swanton charged the Jury, that it was the duty of the master of a ship, to treat his passengers with attention and politeness. The captain stood in the same relation to the passengers, as a master of an Inn or Hotel did towards his guests. Having the superintendance of his vessel, the law had invested the captain with the authority necessary for preserving peace and good order.

On this occasion, the captain not only failed in treating the plaintiff with a becoming decorum, but countenanced, and actually had some agency in the injury, charged in the declaration. The conduct of the defendants towards the plaintiff, was highly reprehensible. After taking into consideration the wounded feelings of the plaintiff on the one hand, and the circumstances of the defendants on the other, it would be the duty of the jury to render such a verdict as they considered just and equitable.

The jury rendered a verdict in favor of the plaintiff, for $46.

* Whenever a vessel arrives on the Equator or any remarkable head-land, where the raw hands and passengers on board have not been before, the seamen, according to an old usage, frequently proceed to the ceremony of shaving, which is thus performed: One of the crew, who is the best calculated for drollery, is habited in a fantastic ridiculous manner, and, with a speaking trumpet in his hand, personates old Neptune. He goes forward to the bow of the vessel, while those who are to be shaved, are kept below, and descends until, perhaps, he reaches the water, and from thence ascends on deck, pretending to have emerged from the ocean. He hails the crew with his trumpet; answer is made, and mutual congratulations pass between his godship and the old seamen. He proceeds to order the requisite apparatus for shaving, which generally consists of a piece of iron-hoop, a composition for lather made of slush and other offensive matters, and a tub of water. The persons who are to be shaved, are then brought on deck, one by one, blindfolded. Those who have treated well, are shaved light, while those who are refractory, are shaved hard. After shaving, his godship proceeds to swear the novice to divers singular observances, one of which is, that he "will never eat brown bread when he can get white."—The one shaved, is then either immersed in a tub of water, or has a bucket full from above, poured on his head, and the frolic ends.